SUPREME COURT OF THE UNITED STATES.

No. 136.

THOMAS HENDERSON & THOS. H. CALLOWAY, PLAINTIFFS IN ERROR,

vs.

THE STATE OF TENNESSEE.

IN ERROR TO THE SUPREME COURT OF TENNESSEE.

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J. & G. S. Gideon, printers.

Be it remembered, that at the July term, 1843, on the 3d day of said month, the transcript of the record in the case — Den, lessee of the State of Tennessee, against Thomas Henderson and Thomas H. Calloway, was filed in the office of the clerk of the supreme court of Tennessee, at Knoxville, which is in the words and figures following, to wit:

Be it remembered, that on the 27th day of January, in the year of our Lord one thousand eight hundred and forty-one, an original summons was issued from the office of the clerk of the circuit court of Monroe county, in the words and figures following, to wit:

State of Tennessee, Monroe county, to the sheriff of Monroe county, greeting:

You are hereby commanded to summons Robert Stapp, William F. Brown, and John Beaty, sen'r, and Solomon Aiken, if to be found in your county, to appear before the judge of the circuit court of Monroe county, at the court house in Madisonville, on the 2d Monday of May next, to answer the complaint of John Den, lessee of the State of Tennessee, of a plea of trespass, wherefore, with force and arms, they broke and entered his close, and ejected him therefrom, to his damage five hundred dollars. Herein fail not, and have you then and there this writ.

Witness, Y. L. Bicknell, clerk of our said court, at office in Madisonville, the 2d Monday of January, 1841.

Y. L. BICKNELL, *Clerk.*

(*See endorsement on page third.*)

State of Tennessee, Monroe county,

Circuit court, January term, 1841.

John Den, by attorneys, complains of Richard Fen, being in custody of the sheriff of said county, for that whereas, heretofore, to wit, the State of Tennessee, on the first day of January, one thousand eight hundred and forty-one, at Toqua, in the county aforesaid, had demised, and to farm let to the said John Den, a certain tract or parcel of land situate and being in the county of Monroe aforesaid, bounded as follows, that is to say, beginning on the northeast corner of the sixteenth section, in the second fractional township, in the fourth range, east of the meridian, Hiwassee district, in said county; thence running with the lines of the said sixteenth section, so as to include the same, with the appurtenances; to have and to hold the same to the said John Den, and his assigns, from the 31st day of December, 1840, for and during, and until the end and term of, ten years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said John Den entered into said tenements, and with the appurtenances, and become, and was possessed thereof, for the said term, so as to him there-

of granted; and the said John Den being so thereof possessed, the said Richard Fen, afterwards, to wit, on the 2d day of January, in the year 1841, with force and arms, &c., entered into the said tenements, with the appurtenances, in which the said John Den was so interested, in manner and for the term aforesaid, which is not yet expired, and ejected the said John Den from his farm, and other wrongs to the said John Den then and there did, against the peace and dignity of the State, and to the damage of the said John Den of five hundred dollars; and therefore he brings his suit, &c.

ROBERT B. REYNOLDS,
Attorney General.

Messrs. Robert Stapp, William F. Brown, and John Beaty, sen'r, and Solomon Aikin.

Sirs: I am informed that you are in possession of, or claim title to, the premises in this declaration mentioned, or to some part thereof, and I being sued in this action as a casual ejector only, and having no claims or title to the same, do advise you to appear before the circuit court to be holden for the county of Monroe, State of Tennessee, on the second Monday of May, 1841, and then and there, by rule of said court, to cause yourself to be made defendants in my stead, otherwise I shall suffer judgment by default, and you will be turned out of the possession.

Yours, respectfully,

January 27th, 1841. RICHARD FEN.

Endorsed, No. 1150, summons and declaration. Den, lessee of the State vs. Richard Fen, &c., to Henderson & Calloway; issued January 27th, 1841; came to hand January 28th, 1841.

I, Martin Henderson, sheriff of Monroe county, do hereby deputise John Scruggs to execute the within precept, as my legal deputy.

Given under my hand and seal this 22d March, 1841.

MARTIN HENDERSON, [SEAL.] *Sh'ff.*

Executed by summoning and serving a copy of this declaration and notice, on the 22d day of March, 1841, upon each defendant, to wit, on Robert Stapp, Wm. F. Brown, John Beaty, sen'r, and Solomon Aikin.

JOHN SCRUGGS, *D. Sh'ff.*

Plea.

John Den, lessee of the State of Tennessee. May term, 1841, of the circuit court of Monroe county.

The defendants, by their attorney, and upon whom the summons has been served in this cause, come into court, and agree to confess the lease, entry, and ouster, supposed in plaintiff's declarations, and upon the trial to rely upon the title only; and thereupon defend the force and injury, when and where, &c., and say, the plaintiff his action against them ought not to have and maintain, because they say they are not

guilty of the trespass and ejectment, as alleged in plaintiff declaration; and of this they put themselves upon the country.

SPENCER JARNAGIN,
Atto. for defendants.

And the plaintiffs also. R. B. REYNOLDS,
Attorney Gen'l.

THE STATE, LESSEE
vs.
JOHN BEATY and others.

In this cause, Thomas Henderson and Thomas H. Calloway, who are, by leave of the court, admitted to defend, in the room and stead of the tenants sued by attorney, comes and defends the force and injury, when, &c., where, &c., and for plea, says said plaintiff ought not to have and maintain this action against them, because they say they are not guilty of the trespass and ejectment, as the plaintiff in the declaration has complained against them; and, according to the common rule, they confess lease, entry, and ouster, and agree to rely upon the title only in the trial of this cause, and put themselves upon the country.

JARNAGIN & BRADFORD,
for defendants.

And the plaintiff doth the like.

R. B. REYNOLDS, *Atto.*
And G. W. CHURCHWELL, *Atto.*

Entry of Record.

JOHN DEN, lessee of the State of Tennessee,
vs.
ROBT. STAPP, Wm. F. Brown, John Beaty, Senr., and Solomon Aikin.

May term of the circuit court of Monroe, and on Thursday, of said term, the following entry was made of record, to wit:

This day came the defendants, upon whom a summons was served in this case, by their attorney, and proposed to enter into the common rule to confess lease, entry, and ouster, and upon the trial to rely upon the title only, and to plead not guilty; which was refused by the court, unless said defendant would give security for the costs. Thereupon, it it is agreed between Robert B. Reynolds, attorney for plaintiffs, and Spencer Jarnagin, attorney for defendants, that time be given to make up the pleading in this cause, provided the trial be not delayed thereby at the next term. It is further agreed, that on the trial of this cause, it is admitted, that the land described in plaintiff's declaration is a school section in Monroe county, in the Hiwassee district, and regularly laid down as such, by the surveyor of said district, upon his general plan; and this order to be evidence in this cause on the trial of the facts admitted.

And on Friday, of the same term, the following entry was made:

Came the parties by their attorneys, and by consent it is agreed, that the plaintiff may take the depositions of T. Hartley Crawford, of Washington city, D. C., upon giving Spencer Jarnagin, esq., forty days notice of the time and *and* place of taking the same; and which deposition, when taken, to be read in evidence on the trial of this cause.

Circuit court, Sept. term, 1841.

On Tuesday of said term, the following entry was made:

DEN, lessee
vs.
ROBT. STAPP, AIKIN, and others. } Ejectment.

By consent of parties this cause is continued until the next term of this court, and a commission awarded the plaintiff to take the depositions of T. Hartley Crawford, Charles Mix, of Washington city, by giving Thomas Henderson thirty days notice of the time and place of taking the same; and Thomas Henderson and Thomas H. Calloway, are permitted to defend this cause in the room and stead of the former defendants.

Wednesday, of the same term, the following entry was made:

Ejectment.

Came the parties by their attorneys, and by consent Thomas Henderson and Thomas H. Calloway, are under the order of last admitted to defend in room of the tenants, in possession, upon entering into the common rule, and confess lease, entry, and ouster, and agreeing to rely upon the title only; and thereupon came James W. Bicknell, and undertook, that, if the defendants be cast, that they shall well and truly abide by and perform the judgment of the court, and that they shall well and truly pay and satisfy all costs that may be awarded against them, or he will do it for them.

January term, 1842.

STATE, lessee,
vs.
HENDERSON & CALLOWAY. }

This cause is continued, as on affidavit of Thos. Henderson, until the next term of this court, and, by consent of parties, a commission is awarded the defendants to take the depositions of the Commissioner of Indian Affairs, at Washington city, by giving Robt. B. Reynolds, plaintiff's attorney, forty days notice of the time and place of taking the same.

May term, 1842.

Wednesday, of said term, the following entry was made of record:

THE STATE'S lessee
vs.
THOMAS HENDERSON & THOS. H. CALLOWAY. }

On affidavit of Thos. Henderson, one of the defendants in this cause, the cause is continued until the next term of this court, by the defend-

ant paying all the costs of the present term of court and the order to take the depositions of T. Hartley Crawford is renewed.

Sept. term, 1842.

THE STATE, lessee,
vs.
HENDERSON & CALLOWAY. } Ejectment.

This cause is continued, on affidavit of the defendants, until the next term of this court; and the order to take the depositions of T. Hartley Crawford, of Washington city, which was made at the last term of this court, is renewed.

January term, 1843.

THE SAME
vs.
THE SAME. } Ejectment.

Came the parties by their attorneys, and this cause is continued until the next term of this court, as on the affidavit of the defendants, upon the defendants paying the costs of this term. It is therefore considered by the court, that the plaintiff recover of the defendants the costs that has accrued in this cause, at the present term of this court. It is further considered by the court, and by the consent of the parties, that the order, made at the last term of this court, to take the depositions of T. Hartley Crawford, of Washington city, be renewed.

May term, 1843, *Thursday* 11*th*, 1843.

DENS, lessee of the State of Tennessee,
vs.
HENDERSON & CALLOWAY. } Ejectment.

Came the parties by their attorneys, and thereupon the following jury, to wit: Martin Webb, R. W. Young, Andrew Allen, Samuel P. Hale, Calvin Hall, James Johnston, Wm. A. Upton, Duke Kimbrough, Daniel Bain, William Bain, Stephen Dye, and Joshua Adams, who being elected, tried, and sworn, well and truly to try the issue joined between the parties, and the testimony not being closed, are respited till to-morrow, (Friday, of the same term,) the following entry was made, &c.

DENS, lessee of the State, &c.,
vs.
HENDERSON & CALLOWAY. } Ejectment.

Came the parties by their attorney, and thereupon came the same jury, which was sworn in this cause on yesterday; and after being respited from rendering their verdict last night, resumed again the consideration of this cause; and after mature deliberation, upon their oaths, do say, they find the defendants guilty of the trespass and ejectment, as plaintiff in his declaration hath alleged, and assess the plaintiff's damage to six cents; whereupon it is considered by the court, that the plaintiff

recover of defendants his term yet to come in the premises, and that a writ of possession issue; and it is further considered by the court, that the defendants pay all the costs in this behalf expended, for which execution may issue.

Monday, 15th May, 1843, being the 7th day of said term, the following entry was made, to wit:

JOHN DEN, lessee of the State of Tennessee,
vs.
THOMAS HENDERSON and Thomas H. Calloway. } Ejectment.

This day came the parties, by their attornies, and the defendants moved the court for a new trial in this cause; which was refused. To the opinion of the court, as expressed to the jury, as also in refusing a new trial, defendants excepted in law, tendered their bill of exceptions, which was signed and sealed by the court, and made part of the record in this cause; and, thereupon, defendants prayed an appeal, in the nature of a writ of error, to the next term of the supreme court, to be held at Knoxville, in July next; and to them said appeal is allowed, they having given bond, with security, according to law.

Bill of exceptions.

JOHN DEN, lessee of the State of Tennessee,
vs.
THOMAS HENDERSON and Thomas H. Calloway.

Be it remembered, that on this 12th day of May, 1843, came on this cause for trial before the circuit court for Monroe county, Hon. Edward Scott presiding. Plaintiff proved defendants in possession of the land, described in the declaration at the time this suit was brought; and then proved, by an admission, entered of record, that the land described in the declaration is a school section, and laid down as such by the surveyor of the Hiwassee district, upon the plan of said district, being the 16th section in second fractional township, in the fourth range, east of the meridian, in the Hiwassee district, and lies in Monroe county. That the school commissioners took possession of said land, and held it till about the time the Legislature of Tennessee passed a law, directing the sale of the school lands in Tennessee. About that time, John Lowry, as attorney and agent professedly of Toqua Will, got possession and retained it for several years, till about 1836, when the school commissioners regained the possession, having sued Lowry immediately after he got possession, and retained it till 1837 or 1838; then Thomas Henderson got possession for the heirs of Andrew Miller, under which title it has since been held.

Defendants produced and read to the jury the depositions of T. Hartley Crawford, Commissioner of Indian Affairs, as follows:

District of Columbia, county and city of Washington, to wit:

In pursuance of the annexed commission, issued from the circuit court of Monroe county, in the State of Tennessee, I, Charles Murry,

a justice of the peace in and for the county and city of Washington, in the District of Columbia, have caused to come before me, at the office of the Commissioner of Indian Affairs, in the city of Washington, in the District of Columbia, on the twenty-eighth day of February, in the year eighteen hundred and forty-three, T. Hartley Crawford, Commissioner of Indian Affairs, a witness on behalf of the defendants, and have proceeded to take the deposition of the said T. Hartley Crawford, to be read in evidence in the case of the lessee of the State of Tennessee, plaintiff, and Thomas Henderson and Thomas H. Calloway, defendants. which is now depending in the said circuit court of Monroe county, in the State of Tennessee. The said T. Hartley Crawford, being first duly sworn, according to law, to speak the truth, the whole truth, and nothing but the truth, deposeth and says, to the following interrogatories propounded to the witness, T. Hartley Crawford, by Thomas J. Campbell, esq., the agent of defendants, and on behalf of said named defendants:

Question 1st. Are you Commissioner of Indian Affairs, duly commissioned and qualified as such?

Question 2d. Are the books and papers of the late Cherokee agent, East, and superintendent of Cherokee removal, in your office, or in any of the offices attached to the Indian bureau; and particularly the book or roll containing a registry of reservations under the Cherokee treaties of 1817 and 1819? If yea, please state whether the name of Andrew Miller appears upon the roll or registry of life estate reservations for a reservation under said treaties. If so, state also the date of his registry and the place of his location; and please annex a certificate copy of his registry to your statement, and allege the same to be such copy.

1st. To the first interrogatory, the witness answers and says, that he is Commissioner of Indian Affairs, duly commissioned and qualified as such.

2d. To the second interrogatory, the witness, answering, saith: That records and papers were returned to the office of Indian Affairs by the former board of commissioners, appointed under the 17 article of the treaty of 29 Dec'r, 1835, among which, he believes, was a book containing a register, headed, "Register of persons who wish reservations under the treaty of July 8th, 1817." Among the names so registered is that of Andrew Miller, thus: "24, 101—Andrew Miller, do. do., 8, Toqua." At the head of the column, above the mark, is written, "1818—May." At the head of the column in which 181 is found, is written, "No. of reservations;" *one* the words do. do.; and opposite the third name, above No. 98, is written, "in right of wife." At the head of the column in which 8 is placed, is written, "No. in family;" and at the head of the column containing "Toqua," is written, "place of residence." The book containing the above registrations and entries was placed in the hands of the present board of commissioners under the Cherokee treaties aforesaid, but has been obtained, and is now before me, for the purpose of making this deposition. I annex a true

copy of the above registry of Andrew Miller, duly certified to be such.

I have no knowledge of any facts connected with this matter, except as derived from the said book and registration, from which only I speak in answering the second interrogatory.

T. HARTLEY CRAWFORD.

District of Columbia, Washington city and county:

I do certify, that the foregoing deposition was taken by me, at the time and place mentioned in the caption; that the answers to the interrogatories are in the handwriting of the witness; that the same was sealed up by me, and deposited in the post office in the city of Washington, without being out of my possession; that I am not of kin to either of the parties, or of counsel for either of them, in said suit; that I am in no wise interested in said suit. Given under my hand and seal, the 28th day of February, 1843.

CHARLES MURRY, [SEAL.]
A justice of the peace in and for the county and city of Washington, in the District of Columbia.

Fee $4; paid by defendants.

CH. MURRY, *J. P.*

"24. 101. Andrew Miller, do. do.; 8, Toqua."

I, T. Hartley Crawford, Commissioner of Indian Affairs, do hereby certify, that the foregoing is a true transcript of the entry of Andrew Miller, in a book now before me, and particularly described in my deposition, to which this is annexed; that at the head of the column, above the marks and figures "24," is the word and the names and figures, "1818—May;" that at the head of the column, over the figures "101," are written, "No. of reservations;" that at the head of the column, over the entry of "Andrew Miller, do. do.," is the word, "names;" and the third entry above Miller, and in same column, the words, "Benj. Cooper, in right of wife;" that at the head of the column in which the figure "8" is placed, are the words, "No. in family;" and that at the head of the column in which the name "Toqua" is written, are the names, "place of residence."

T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

28 *February*, 1843.

I hereby certify, that Thomas Hartley Crawford, who has signed the foregoing depositions and certificate, is, and was at the time of signing the same, Commissioner of Indian Affairs, and that to his acts as such, full faith and credit are and ought to be given.

In testimony whereof, I have hereunto set my hand, and caused the [SEAL.] seal of the War Department to be affixed, this first day of March, A. D. eighteen hundred and forty-three.

JOHN C. SPENCER,
Secretary of War.

Then proved by John Black, that in the spring of 1818, Andrew Miller went to Toqua, and the last of February, or 1st of March, 1818,

took up his residence there. Miller was killed the last of July, or first of August, 1818. He had part of his family with him; some of his children and some negroes. They remained upon the place until after Miller's death. Miller's wife was with him at the time of his death. Shortly after that event, two natives of the Cherokee nation of Indians, George Hicks and James Chisolen, took charge of Andrew Miller's estate. A few days after the death of Miller, his wife sent for witness and wanted him to take possession of the land now in dispute, and to hold it for her and the heirs of Andrew Miller. Witness offered her a thousand dollars for her claim, which was refused. Said Hicks and Chisolen and Mrs. Miller put witness in possession of the land in dispute in the fall of 1818 Two of the children of Andrew Miller lived with witness, were sent to school, and the expense paid out of the rents and profits of the land. Witness held possession for the children or heirs of Andrew Miller, till put off by the school commissions in 1822, when the children of Miller, then living with witness, went to the Cherokee nation to reside, where their mother had before gone. It was proved, by sundry witnesses, that Andrew Miller was the head of an Indian family, resided in the Cherokee nation, east of the Mississippi, at the date of the treaty of 1817, between the United States and Cherokee nation; that, from the spring of 1818, till his death in July or August of the same year, he resided upon the land in dispute, claiming the same as a reservation, where, he said, he intended to live and die; that the land in dispute was not ceded by the treaty of 1817, but was by that of 1819. Miller's improvements consisted of two houses, some stables, and about five acres of corn, growing at the time of his death; that, not long after the death of Miller, those who professed to be his representatives promised a survey of the land in dispute as a reservation. There was other evidences in the cause not necessary to be stated, as the principal question raised was, whether, from the above facts, Miller's children had any interest in said land as a reservation, by virtue of the registration and residence of *of* their father at Toqua, the place in dispute. The court instructed the jury, among other things not excepted to, that it was admitted that defendants had not any title in themselves, but relied solely on an outstanding title in *in* the heirs of Andrew Miller; that although the ancestor, Andrew Miller, registered his name for the place in dispute, and took possession thereof in the spring of 1818, and died upon the place in July or August of the same year, and before the treaty of 1819, no title vested in him, Andrew Miller, and consequently none could vest or descend to his heirs. The jury found a verdict for plaintiff. The counsel for defendants excepted to the charge of the court, and prayed that this their bill of exceptions might be signed and sealed, and made a part of the record, which is done accordingly.

EDWARD SCOTT. [SEAL.]

Appeal Bond.

Know all men by these presents, that we, Thomas Henderson, Tho-

mas H. Calloway, and John McGhee, are held and firmly bound unto John Den, lessee of the State of Tennessee, in the penal sum of two hundred and fifty dollars, for the payment of which we bind ourselves, jointly and severally, our heirs, representatives, &c. The condition of the above obligation is such, that whereas John Den, lessee of the State of Tennessee, instituted an action of ejectment in the circuit court for Monroe county, Tennessee, against Thomas Henderson and Thomas H. Calloway, and judgment thereupon being rendered against them, they have this day prayed an appeal, in the nature of a writ of error, to the next term of the supreme court, at Knoxville. Now, if the said Henderson and Calloway do prosecute the appeal aforesaid with effect, then this bond to be void and of none effect; otherwise to remain in full force and virtue.

In testimony whereof, we have hereunto set our hands and affixed our seals, this 15th day of May, 1843.

THOS. HENDERSON, [SEAL.]
By Atto. THOS. HENDERSON. THOS. H. CALLOWAY, [SEAL.]
JOHN McGHEE. [SEAL.]

Bill of Costs.

THE STATE LESSEE, &c.,
vs.
HENDERSON & CALLOWAY.

State tax												$2 25
Clerk's process, 75c.; 1 aff't., 12½; 15 subps., $1 87½; 3 conts., 1 12½; 2 orders to take depositions, 50c.; 1 commission, 25c.; 2 orders of court, 50c.; 1 security taken in court, 20c.; 11 wit's. probates, 68¾; 1 jury, 12½c.; 1 respite, 25c.; judgt., 75c.; rule for new trial, 25c., and discharged, 25c.; transcript, 1 62½; appeal bond, 50c.; copy of costs, 25c.; bill of exceptions, $1 75; total												11 76¼
She'ff M. Henderson, 3 wit's. summoned, 75c.; one not found, 12½c.; 1 jury, 12½c.; 1 call, 4c.												1 04
" John Scruggs, serving writ												4 00
" Ben. Howard, 3 wit's. summoned												75
She'ff John Shamblain,	2 wit's. summoned, 50; 1 not, 12½											62½
" Wm. G. Bogle,	1 "	"										25
" John J. Humphreys,	1 "	"										25
" R. Clayton,	3 "	"										75
" R. B. Clowdis,	2 "	"										25
Wit's. 1. Wm. E. Gentry,	2 days, at	75c.										1 50
" 2. Edw'd Hartt,	11 "	"	"	74 miles *a* 4c.								11 21
" 3. Samuel McCarmell,	14 "	"	$1 00	160 "	"	4	ferr'gs, 50c.					20 40
" 4. Walter Carruth,	10 "	"	"	134 "	4	"	50c.					15 86
" 5. John Rider,	5 "	"	"	50 "	4	"	50c.					7 50
" 6. Robert Wear,	2 "	"	"	9 "	1	"	12½					2 48
" 7. John Black,	5 "	"	"	25 "	2	"	25c.					6 25
" 8. A. H. Henly,	7 "	"	75c.	52 "	2	"	20c.					8 03
" 9. Arch'd Sloan,	3 "	"	"									2 25
" 10. Benj. Howard,	26 "	"	"	132 "	4							24 78
" 11. Achilles Stapp,	8 "	"	"									6 00
Judgt. for damages												6
												128 25
Atto. R. B. Reynold, tax fee												20 00
												$148 25

I do hereby certify, that the foregoing transcript is a true copy of the record bill of exceptions and proceedings had, upon record in my office, relation to the above stated cause.

Given under my hand, at office in Madisonville, this 8th June, 1843.

Y. L. BICKNELL,
Clerk of Monroe circuit court.

And afterwards, to wit, at the July term, 1843, of the supreme court of Tennessee, at Knoxville, the following decree was rendered in said cause, viz:

MONDAY, *24th July*, 1843.

THOMAS HENDERSON and THOMAS H. CALLAWAY,
vs.
JOHN DEN, lessee of the State of Tennessee.

The record in this cause having been read, and argument of counsel heard, it is considered by the court that the judgment of the circuit court of Monroe county be affirmed; that the defendant in error recover of plaintiffs in error his term yet to come in the premises, in the declaration mentioned, and that a writ of possession issue. It is further considered by the court, that defendant in error recover of plaintiffs in error, Thomas Henderson and Thomas H. Callaway, the costs of this cause in the court below.

It is further considered by the court, that plaintiffs in error, and their surety, John McGhee, pay the costs of this cause in this court, for which executions are awarded.

Writ of error

United States of America, ss:

The President of the United States, to the honorable the judges of the supreme court of Tennessee, at Knoxville, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said
before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between John Den, lessee of the State of Tennessee, plaintiff, and Thomas Henderson and Thomas H. Callaway, defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath hap-

pened, to the great damage of the said Thos. Henderson and Thos. H. Callaway, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the honorable Roger B. Taney, chief justice of the said Supreme Court, this first Monday of December, in the year of our Lord one thousand eight hundred and forty-four.

WM. THO. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by

J. CATRON,
Asso. jus. S. C. U. S.

Copy of appeal bond.

Know all men by these presents, that we, are held and firmly bound, unto John Den, lessee of the State of Tennessee, in the full and just sum of to be paid to the said John Den, lessee of the State of Tennessee, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this day of in the year of our Lord one thousand eight hundred and forty-five.

Whereas, lately, at a supreme court of the State of Tennessee, at Knoxville, in a suit depending in said court, between John Den, lessee of the State of Tennessee, plaintiff, and Thomas Henderson and Thomas H. Callaway, defendants, judgment was rendered against the said Thomas Henderson and Thomas H. Callaway; and the said Thomas Henderson and Thomas H. Callaway, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said John Den, lessee of the State of Tennessee, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of February next.

Now, the condition of the above obligation is such, that if the said Thomas Henderson and Thomas H. Callaway shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

Signed, sealed, and delivered in presence of—
THOS. HENDERSON,
By E. H. FOSTER. [SEAL.]
THOS. H. CALLOWAY,
E. H. FOSTER. [SEAL.]

Approved by E. H. FOSTER. [SEAL.]

Citation.

The United States of America, to John Den, lessee of the State of Tennessee, his excellency, James C. Jones, Governor in and over the said State of Tennessee, and West H. Humphreys, esquire, attorney general of said State, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of February next, pursuant to a writ of error filed in the clerk's office of the supreme court of Tennessee, at Knoxville, wherein Thomas Henderson and Thomas H. Callaway are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Catron, an associate justice of the Supreme Court of the United States, this fourth day of February, in the year of our Lord one thousand eight hundred and forty-five.

J. CATRON,
Asso. jus. S. C. U. S.

September 1*st*, 1845.

I acknowledge service of this.

W. H. HUMPHREYS,
Attorney general for State of Tennessee.

I acknowledge the service of this.

JAMES C. JONES, *Gov. Te.*

I, James W. Campbell, clerk of the supreme court of Tennessee, at Knoxville, do hereby certify, that the foregoing is a full, true, and perfect copy of the record and proceedings had by said court in the foregoing cause, remaining of record in my office.

I do further certify, that the foregoing contains the original writ of error, and a copy of the appeal bond, the original of which is now on file in my office, and the original citation to the Governor and attorney general of the State of Tennessee.

Given under my hand, and the seal of said court, at office, in Knoxville, the 15th day of November, 1845.

JAMES W. CAMPBELL, *Clerk.*

Filed 4th Dec., 1845.